

When Does Governance Go Public?

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I have long thought that defining private governance is trickier than most people acknowledge. Edward Stringham and Aaron Ross Powell have been debating its meaning, thereby illuminating some of the difficulties. I will restrict my remarks to territorial governance as Stringham and Powell have done.

First, I would like to note that the conversation has drifted a little. At some points Stringham and Powell are discussing private governance, at others they are discussing states. These topics are related, but not identical. In my response I will first define state then review several thought experiments to illuminate what private governance is.

I prefer Weber's definition of a state, a territorial monopoly of force. This means that a sovereign privately developed and owned city would be a state, contrary to Stringham.

There are three facets which can help define territorial private governance. The first facet involves the decisionmaking process of the governing body. The second facet involves the acquisition of the territory on which the body governs. The third facet is the size of the population in question. Ultimately I argue that the definition of private governance is somewhat nebulous, and that that is ok.

In this essay I will use examples of several types of territorial governance structures, by which I mean any body with decisionmaking authority over a given territory. I am assuming that the territorial governance structures have sovereignty over their territory, that is, they are not subordinated to any broader governing body.

The first facet is the decisionmaking process of the governance body. Assume a developer wants to build a new independent city. They justly acquire the land under allodial title. After building the attractions of the city, the developer now has two choices. First, they can establish a home owner's association (HOA), giving up decisionmaking rights. Second, they can lease the land, retaining decisionmaking rights, a setup known as a proprietary community. A third option not available to the developer is simply to exist as a democratic socialist state. There are now three contrasting decisionmaking processes over a potential city-state in addition to traditional government.

The second facet is the consent when establishing a governance body. One can establish a governance structure with no consent, universal consent, or anywhere in between. Establishing a territorial governance structure with no consent would be the conquest of a new region. An example of establishing a governance structure with universal consent would be a company buying land and building a new city, Jamshedpur India for example. The Swiss state is an example of a governance structure being established with partial consent.

The final facet is the population in question. Does private governance become public when a certain number of people are subject to their decisions?

There are various thought experiments with these facets to test our intuitions about what private governance is.

Take, for example, a developer wanting to build a city-state. They try to copy an existing government. To do so the developer creates an HOA, basing the constitution and procedures on the existing government. After finishing there are two city-states, one governed by a government and one by an HOA. However, they are functionally the same, they have the same decisionmaking process, and they have the same outcomes.

If the developer instead chooses to lease the land, rather than establishing an HOA, the governance structure would look different. However, assume the developer likes the idea of both an HOA and retaining ownership. The developer could lease the land for 1000 years and grant an HOA decisionmaking authority for those 1000 years. The city is still privately owned, but with a governing structure identical to a traditional government.

Regarding consent when establishing the governance body, assume two identical cities. Both are governed by a traditional democratic socialist state. Both have existed about the same amount of time. However, one was founded by conquest while the other was founded on a deserted island. In other words, they are functionally identical but differ in the consent levels during the founding.

Now, assume the two cities are both privately owned. A corporation retains ownership over the land. The corporations have the same governance structure. However, one city was founded by conquest and the land for the other was legitimately acquired.

Lastly, does size impact whether something is considered public or private governance. Is an HOA of two people public governance? What about a proprietary city of 10,000,000?

For what it's worth, here's my intuition. An HOA is public governance. Initial consent is irrelevant to considering whether something is public or private governance. And a proprietary community of a sufficient size can be considered a form of public governance. That being said, reasonable people can disagree. However, the fact that the lines between private and public governance are not clear does not mean the concepts are indistinct, after all, night and day are distinct even though dusk and dawn still exist.